

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 14 of 2000

in

SPECIAL CIVIL APPLICATION No 4861 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

EKTA TOURING CINEMA

Versus

HARSHADBHAI CHHOTUBHAI DESAI

Appearance:

MR JAYANT P BHATT for Appellant
MR MB GANDHI for Respondent No. 1

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/01/2000

ORAL JUDGEMENT

(Per:Thakkar Actg.C.J)

#. Admitted. Mr. M.B.Gandhi learned advocate for the respondent no.1-original petitioner appears and waives service of notice of admission on behalf of respondent no.1. Ms. Manisha Lavkumar waives service of notice of admission on behalf of respondents nos 2,3 and 4.

#. In the facts and circumstances, the matter is taken up for final hearing today.

#. This appeal is filed against an order passed by the learned Single Judge in SCA No. 4861 of 1999 on 9.12.1999. Said order reads as under:

" The petitioner challenges the grant of licence under the Bombay Cinema Rules 1954, to the respondent no.1. The main objection appears to be that in the vicinity of the cinema house, a temple and a school are situated. Under order dated 29th June 1999, the licence granted to the respondent no.1 has been extended till 31st December 1999. The objections raised by the present petitioner and others have mainly been rejected on the ground that they had not raised the objections earlier. The substantive objections raised by the objectors are not considered. By way of interim relief it is directed that the licence given to the respondent no.1 and extended under the order dated 29th June 1999, shall not be further extended without express permission of this court."

#. We have heard Mr. B.P.Tanna, Senior advocate appearing for Mr. J.P.Bhatt for the appellant and Mr. M.B.Gandhi learned advocate for the respondent no.1-original petitioner.

#. Several contentions were raised by the learned counsel for the appellant. In the facts and circumstances, however, in our opinion, it would be neither advisable nor desirable to express any opinion on the merits of the matter one way or the other. In the main matter (SCA No.4861 of 1999) Rule has been issued and it awaits final hearing. Regarding interim relief however, it was stated by the learned single Judge that no such order could have been passed in view of certain facts including the fact that without hearing the original petitioner, the action was taken. At earlier

occasion some order was passed by the learned single Judge permitting the amendment in the petition. But, a copy of the amended petition was not given to the appellant.

#. It was, however, stated by the appellant that before an order could be passed by the learned single Judge 9.12.1999, an order was already passed by the Mamlatdar respondent no.2 herein on 6.12.1999 renewing the licence upto 31.12.1999. Unless and until the said period is over or the order dt. 6.12.1999 is set aside, no interim order could have been granted by the learned Single Judge. He also submitted that before the order was passed, the counsel for the appellant was not heard.

#. Mr. Gandhi learned advocate for the respondent no.4 on the other hand submitted that the learned Single Judge has passed the order as the learned counsel for the appellant was not present. The order was passed after considering the earlier orders as well as the fact that no order could have been passed by the authority in view of the provisions of Bombay Cinema Rules 1954 and the licence could not have been renewed. Thus the order passed by the Mamlatdar was illegal.

#. Prima-facie in our opinion, it would be in the interest of justice if the learned Single Judge passes an order after hearing all the parties. As we are allowing this appeal only against an order granting interim relief, we express no opinion on the merits of the matter. Interim relief passed by the learned single Judge is hereby set aside. The learned Single Judge will now hear the matter on interim relief and pass an appropriate order after affording opportunity of hearing to parties. We may also state that the observations made by the learned single Judge in the impugned order as well as the observations made by us in this order will not in any way be understood as if we had expressed any opinion on merits and as and when the matter will be taken up for hearing, it will be open to the parties to raise all objections and the learned learned single Judge will pass appropriate order on merits in accordance with law. The appeal is allowed to the above extent. No order as to costs.

The office will place the matter before the learned single Judge on 14.2.2000.

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